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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,087

04/10/2006

Norbert Mencke

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BAYER HEALTHCARE LLC

P.O.BOX 390

SHAWNEE MISSION, KS 66201

EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

06/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/541,087	<b>Applicant(s)</b> MENCKE ET AL.	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1-4 are pending examination. Claims 5 and 6 were cancelled in the amendment filed 3/09/2009.

### ***Specification***

Applicant's amendment to the specification has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder (US 6,063,771).

Snyder discloses formulations comprising spinosyn (abstract). The composition is used to control lice in humans (column 2, lines 27-43). Natural pyrethrins are also taught to be used for the control of lice (column 1, lines 60-67). Spinosyn and natural pyrethrins may be combined and formulated as shampoos, lotions or conditioners (column 4, lines 5-20).

### ***Response to Arguments***

Applicant's arguments filed 3/09/2009 have been fully considered but they are not persuasive. Applicant's argue that Snyder does not teach a repellent effect and that repellency means driving back the pest but does not necessarily mean the pests are killed. Applicants argue Snyder does not teach repellency at all and one skilled in the art would not think it would be relevant in controlling lice.

The Examiner strongly disagrees with this viewpoint. As Applicant has stated repellency does not necessarily mean that the pests are killed. Therefore, Applicant has recognized that pests may be killed in order to achieve repellency. Since claims are given their broadest reasonable interpretation, repellency would inherently be achieved by the use of a pesticide. Furthermore, Snyder discloses a method of repelling lice at column 2, lines 62-65. Synder states that, "controlling a lice infestation" refers to treating an active lice infestation or preventing an infestation in a human who is likely to be exposed to lice. Hence, preventing an infestation and repelling insects are synonymous terms which imply the same meaning.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder (US 6,063,771) in view of Knauf et al. (2002/0061928).

### **Applicant's Invention**

Applicant claims the method controlling arthropods as discussed above. The specific arthropods are selected from ticks, fleas, midges or flies.

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

The teachings of Snyder are addressed in above 102(b) rejection.

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Snyder does not teach ticks, fleas, midges or flies. It is for this reason that Knauf et al. is joined.

Knauf et al. teach that pyrethroids are used with chloronicotinyl insecticides for controlling sucking pests, such as, thrips, ticks and lice [0002] and [0011].

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Snyder and Knauf et al. to utilize the method of controlling ticks, thrips and other sucking pests. One would have been motivated to utilize this method because Knauf et al. teaches that pyrethroids in combination with nicotinyl insecticides are known to control sucking pests.

### ***Response to Arguments***

Applicant's arguments filed 3/09/2009 have been fully considered but they are not persuasive. Applicants argue that Knauf is concerned with a pesticidal composition and does not refer to a repellent effect.

As addressed above, the Examiner strongly disagrees with this viewpoint. As Applicant has suggested repellency does not necessarily mean that the pests are killed. Hence, Applicant has recognized that pests may be killed in order to achieve repellency and a pesticidal effect is synonymous to a repellent effect.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
Patent Examiner  
Art Unit 1616

/Mina Haghighatian/  
Primary Examiner, Art Unit 1616